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| APPLICATION NO. | FILING DATE | FIRST NAMED INVENTOR | ATTORNEY DOCKET NO. | CONFIRMATION NO. |
|-----------------|-------------|----------------------|---------------------|------------------|
| 10/530,890      | 04/11/2005  | Victor Villagrasa    | 1200.729            | 4475             |

7590 06/15/2007  
Liniak Berenato  
Longacre & White  
Suite 240  
6550 Rock Spring Drive  
Bethesda, MD 20817

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| EXAMINER |
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ESTREMSKY, GARY WAYNE

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| ART UNIT | PAPER NUMBER |
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3676

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| MAIL DATE | DELIVERY MODE |
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06/15/2007

PAPER

**Please find below and/or attached an Office communication concerning this application or proceeding.**

The time period for reply, if any, is set in the attached communication.

## Office Action Summary

Application No.

10/530,890

Applicant(s)

VILLAGRASA ET AL.

Examiner

Gary Estremsky

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 1 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

### Status

- 1) ☒ Responsive to communication(s) filed on 08 May 2007.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

### Disposition of Claims

- 4) ☒ Claim(s) 1-29 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☐ Claim(s) \_\_\_\_\_ is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☒ Claim(s) 1-29 are subject to restriction and/or election requirement.

### Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

### Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
  - ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

### Attachment(s)

- |  |   |
|--|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892)                     | 4) <input type="checkbox"/> Interview Summary (PTO-413)           |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | Paper No(s)/Mail Date. _____                                      |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08)          | 5) <input type="checkbox"/> Notice of Informal Patent Application |
| Paper No(s)/Mail Date _____  | 6) <input type="checkbox"/> Other: _____                          |

## **DETAILED ACTION**

### **Opening Remarks**

1. Applicant's election of species (as shown in Fig 1 filed for example) filed on 5/8/07 is noted. However, after closer examination of the elected claims, examiner notes that all disclosed embodiments of the invention were not listed in the requirement for election of species whereby inconsistencies between the elected embodiment and scope of claims Applicant intends for examination may have occurred. The claims listed as readable on Fig 1 may not be fully enabled by that embodiment's illustration and description. For example, elected claim 3 includes a "panel or mask" that is not shown in Fig 1. The embodiment of Fig 2 has a panel or mask (5) but it appears that the handle of that embodiment must be operated in a direction perpendicular to operative direction of the elected embodiment of Fig 1 whereby combination of the panel or mask of the second embodiment with the handle of the first embodiment would interfere/prevent operation of the handle. Similarly, it's not clear how the gripping part of the Fig 1 can "move in translation and/or rotation" as set forth in elected claim 4.

Since the previous election of species requirement did not include a listing of all illustrated embodiments, that requirement is vacated and a new requirement for election of species detailed above that more clearly provides for Applicant to choose any of the disclosed embodiments. It's suggested that the disclosure be carefully reviewed and an embodiment of the invention elected for examination including a listing of claims

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readable on thereon corresponding in scope with what has been disclosed with respect to the elected embodiment.

***Election of Species Requirement***

2. This application contains claims directed to the following patentably distinct species:

- I - The invention illustrated in Fig 1 for example.
- II - The invention illustrated in Fig 2 for example.
- III - The invention illustrated in Fig 3 for example.
- IV - The invention illustrated in Fig 4 for example.
- V - The invention illustrated in Fig 5 for example.
- VI - The invention illustrated in Fig 6a,b for example.

The species are independent or distinct because the details of their construction are assumed patentably distinct prior to examination, those details requiring separate search and examination that would place undue burden on the examiner if all examined in this one Application.

Applicant is required under 35 U.S.C. 121 to elect a single disclosed species for prosecution on the merits to which the claims shall be restricted if no generic claim is finally held to be allowable. It's important for Applicant to note any elected claims that may be generic to more than the elected species so as to provide for the rejoinder of non-elected claims that are dependent therefrom whereby no burden is placed on

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Applicant should the generically-claimed (relatively broad genus concept) be found to contain allowable subject matter (as opposed to species-specific structure/function).

Applicant is advised that a reply to this requirement must include an identification of the species that is elected consonant with this requirement, and a listing of all claims readable thereon, including any claims subsequently added. An argument that a claim is allowable or that all claims are generic is considered nonresponsive unless accompanied by an election.

Upon the allowance of a generic claim, applicant will be entitled to consideration of claims to additional species which depend from or otherwise require all the limitations of an allowable generic claim as provided by 37 CFR 1.141. If claims are added after the election, applicant must indicate which are readable upon the elected species. MPEP § 809.02(a).


### ***Conclusion***

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Gary Estremsky whose telephone number is 571 272-7055. The examiner can normally be reached on M-Thur 7:30-6.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Brian Glessner can be reached on 571 272-6843. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

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Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.



Gary Estrensky  
Primary Examiner  
Art Unit 3676